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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Second Application by BellSouth Corporation,)

BellSouth Telecommunications, Inc., and)

BellSouth Long Distance, Inc., for)

Provision of In-Region, InterLATA)

Services in Louisiana)

CC Docket No. 98-121

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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Michigan Order	Memorandum Opinion and Order, <u>In re: Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan</u> , 12 FCC Rcd 20543 (1997).
South Carolina Order	Memorandum Opinion and Order, <u>In re: Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina</u> , 13 FCC Rcd 539 (1997).

State Orders

Florida PSC Final 271 Order	Florida Public Service Commission, Final Order On BellSouth Telecommunications, Inc.'s Petition Filed Pursuant to Section 271(C) of the Telecommunications Act of 1996 and Proposed Agency Action Order On Statement of Generally Available Terms and Conditions, Order No. PSC-97-1459-FOF-TL, <u>In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996</u> , Docket No. 960786-TL (Nov. 19, 1997), attached to MCI Comments as Ex. U.
Florida PSC Final Order on Arbitration	Florida Public Service Commission, Final Order on Arbitration, Order No. PSC-96-1579-FOF-TP, <u>In re: Petitions by AT&T, et al., for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc., concerning interconnection and resale under the Telecommunications Act of 1996</u> , Docket Nos. 960833-TP, 960846-TP, 960916-TP (Dec. 31, 1996).

<p>Florida PSC Interconnection Order</p>	<p>Florida Public Service Commission, Final Order Resolving Interconnection Agreement Disputes, Addressing Retail Service Composition, and Setting Non-Recurring Charges, Order No. PSC-98-0810-FOF-TP, <u>In re: Motions of AT&T Communications of the Southern States, Inc., and MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., to compel BellSouth Telecommunications, Inc., to Comply with Order No. PSC-96-1579-FOF-TP and to set non-recurring charges for combinations of network elements with BellSouth Telecommunications, Inc., pursuant to their agreement</u>, Docket No. 971140-TP (June 12, 1998), attached to AT&T Comments as App. Vol. V, Attach. 29.</p>
<p>Georgia PSC OSS Order</p>	<p>Georgia Public Service Commission, Order Adopting OSS Report, <u>In re: Investigation into Development of Electronic Interfaces for BellSouth's Operations Support Systems</u>, Docket No. 8354-U (Apr. 21, 1998), attached to AT&T Comments as App. Vol. II, Attach. 2.</p>
<p>Georgia PSC Permanent Rate Order</p>	<p>Georgia Public Service Commission, Order Establishing Cost-Based Rates, <u>In re: Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services</u>, Docket No. 7061-U (Oct. 21, 1997), attached to this Evaluation as Ex. 5.</p>
<p>Louisiana ALJ Pricing Recommendation</p>	<p>Louisiana Public Service Commission, Final Recommendation, <u>In re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC cost studies submitted pursuant to sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as adopted by General Order dated March 15, 1996 in order to determine the cost of interconnection services and unbundled network components to establish reasonable, non-discriminatory, cost based tariffed rates</u>, Docket No. U-22022. Consolidated with <u>In re: Review and consideration of BellSouth Telecommunications, Inc.'s tariff filing of April 1, 1996, filed pursuant to section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market, which tariff introduces interconnection and unbundled services and establishes the rates, terms, and conditions for such service offerings</u>, Docket No. U-22093 (Oct. 17, 1997), attached to BellSouth Brief as App. C-3, Vol. 36, Tab 292.</p>

<p>Louisiana PSC Amendments to General Order</p>	<p>Louisiana Public Service Commission, Amendments as Adopted 3/19/97 to Sections 901, 1001, and 1101 of the Regulations for Competition in the Local Telecommunications Market General Order Dated March 15, 1996 (as amended 10/16/96), <u>In re: Amendments to General Order dated March 15, 1996, as Amended October 16, 1996, In re: Regulations for Competition in the Local Telecommunications Market</u>, (Mar. 19, 1997), attached to BellSouth Brief as App. C-2, Vol. 23, Tab 194, App. A.</p>
<p>Louisiana PSC SGAT Revision Order</p>	<p>Louisiana Public Service Commission, Order No. U-22252-B, <u>In re: Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to the fourteen requirements set forth in Section 271(c)(2)(B) in order to verify compliance with Section 271 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region</u>, Docket No. U-22252 (June 18, 1998), attached to BellSouth Brief as App. C-1, Vol. 15, Tab 150.</p>
<p>Louisiana PSC Pricing Reconsideration Order</p>	<p>Louisiana Public Service Commission, Order No. U-22022/22093-B, <u>In re: Review and Consideration of BellSouth Telecommunications, Inc.'s (the Company or BellSouth) TSLRIC and LRIC cost studies submitted pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as adopted by General Order dated March 15, 1996 in order to determine the cost of interconnection services and unbundled network components to establish reasonable, non-discriminatory, cost based tariffed rates</u>, Docket No. U-22022. Consolidated on 10/9/96 with <u>In re: Review and Consideration of BellSouth Telecommunications' tariff filing of April 1, 1996, filed pursuant to Sections 901 and 1101 in the Regulations for Competition in the Local Telecommunications Market, which introduces interconnection and unbundled services</u>, Docket No. U-22093 (Nov. 19, 1997), attached to BellSouth Brief as App. C-3, Vol. 36, Tab 299.</p>

<p>Louisiana PSC Final Pricing Order</p>	<p>Louisiana Public Service Commission, Order No. U-22022/22093-A, <u>In re: Review and consideration of BellSouth's TSLRIC and LRIC cost studies submitted per Sections 901.C and 1001.E of the LPSC Local Competition Regulations in order to determine the cost of interconnection services and unbundled network elements to establish reasonable, non-discriminatory, cost-based tariffed rates</u>, Docket No. U-22022. Consolidated with <u>In re: Review and Consideration of BellSouth's tariff filing per Section 901 and 1001 of the LPSC Local Competition Regulations, which tariff introduces interconnection and unbundled services</u>, Docket No. U-22093 (Oct. 22, 1997), attached to BellSouth Brief as App. C-3, Vol. 36, Tab 293.</p>
<p>Massachusetts DPU Order</p>	<p>Massachusetts Department of Public Utilities, Phase 4 Order, <u>In re: Consolidated Petitions of New England Telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between NYNEX and the aforementioned companies</u>, Docket Nos. D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Dec. 4, 1996).</p>
<p>Michigan PSC Order</p>	<p>Michigan Public Service Commission, Opinion and Order, <u>In the matter of the application and complaint of MCImetro Access Transmission Services, Inc., against Ameritech Michigan requesting non-discriminatory, efficient and reasonable use of unbundled loops using GR303 capability</u>, Case No. U-11583 (June 3, 1998), attached to AT&T Comments as App. Vol. VI, Attach. 31.</p>
<p>Montana PSC Order</p>	<p>Montana Public Service Commission, Order on Supplemental Disputed Issues, Order No. 5961d, <u>In the matter of the Petition of AT&T Communications of the Mountain States, Inc. Pursuant to 47 U.S.C. Section 252(b) for Arbitration of Rates, Terms, and Conditions of Interconnection with US WEST Communications, Inc.</u>, Docket No. D96.11.200 (Apr. 30, 1998), attached to AT&T Comments as App. Vol. V, Attach. 30.</p>

<p>New York PSC Order</p>	<p>New York Public Service Commission, Opinion and Order Setting Rates for First Group of Network Elements, Opinion No. 97-2, <u>In re: Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, WorldCom, Inc. d/b/a LDDS WorldCom and the Empire Association of Long Distance Telephone Companies, Inc. Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company and Sections of New York Telephone Company's Tariff No. 900</u>, Case No. 95-C-0657; <u>In re: Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market</u>, Case No. 94-C-0095; <u>In re: Proceeding on Motion of the Commission Regarding Comparably Efficient Interconnection Arrangements for Residential and Business Links</u>, Case No. 91-C-1174 (Apr. 1, 1997).</p>
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Prior Section 271 Evaluations

<p>DOJ Louisiana I Evaluation</p>	<p>Evaluation of the United States Department of Justice, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u>, CC Docket No. 97-231 (Dec. 10, 1997), attached to this Evaluation as Ex. 3.</p>
<p>DOJ Michigan Evaluation</p>	<p>Evaluation of the United States Department of Justice, <u>In re: Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Michigan</u>, CC Docket No. 97-137 (June 25, 1997).</p>
<p>DOJ Oklahoma Evaluation</p>	<p>Evaluation of the United States Department of Justice, <u>In re: Application of SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma</u>, CC Docket No. 97-121 (May 16, 1997).</p>

DOJ South Carolina Evaluation	Evaluation of the United States Department of Justice, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina</u> , CC Docket No. 97-208 (Nov. 4, 1997).
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Filings and Comments in the Current Louisiana Application

BellSouth Brief	Brief in Support of Second Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (July 9, 1998).
ALTS Comments	Comments of the Association for Local Telecommunications Services in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
AT&T Comments	Comments of AT&T Corp. in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
CompTel Comments	Comments of the Competitive Telecommunications Association in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).

Cox Comments	Comments of Cox Communications, Inc., in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
e.spire Comments	Comments of e.spire Communications, Inc. (public version), in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
Hyperion Comments	Comments of Hyperion Telecommunications, Inc., in Opposition to BellSouth's Second Section 271 Application for InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket 98-121 (Aug. 4, 1998).
Intermedia Comments	Comments of Intermedia Communications, Inc., in Opposition to BellSouth's Application for In-Region, InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
KMC Comments	Comments of KMC Telecom, Inc., In Opposition to BellSouth's Application for InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
LPSC Comments	Comments of the Louisiana Public Service Commission in Support of BellSouth's Application for In-Region, InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).

MCI Comments	Comments of MCI Communications Corp., in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
OmniCall Comments	Comments of OmniCall, Inc., In Opposition to BellSouth's Second Application for In-Region, InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
Sprint Comments	Petition to Deny of Sprint Communications Company, L.P., <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
State Communications Comments	Comments of State Communications, Inc., in Opposition to BellSouth's Second Application for InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
Time Warner Comments	Petition to Deny of Time Warner Telecom, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
WorldCom Comments	Comments of WorldCom, Inc., in Opposition to BellSouth's Second Application for InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).

Summary of Evaluation

Based upon the record before us, BellSouth's second application to provide in-region interLATA service in Louisiana should be denied because BellSouth has not yet satisfied the requirements of section 271 of the Telecommunications Act of 1996.

Applications under section 271 should be granted only when the local markets in a state have been fully and irreversibly opened to competition. This standard seeks to ensure that the barriers to competition that Congress sought to eliminate in the 1996 Act have in fact been fully eliminated and that there are objective criteria to ensure that competing carriers will continue to have nondiscriminatory access to the facilities and services they will need from the incumbent BOC.

At the time of BellSouth's first section 271 application in Louisiana, there was no significant competition in Louisiana, and there were critical barriers that impeded the growth of competition. In the nine months since the first application was filed, there have been encouraging developments in competition by resellers and facilities-based entrants, but the market penetration of those competitors is still quite modest, and not all barriers have been removed for these types of competition. Most significantly, however, there is still virtually no competition in Louisiana through the use of unbundled network elements, and every reason to believe there would be such competition if most of the impediments, which we discussed in our previous evaluation, were not still in place.

As before, BellSouth has failed to demonstrate that it offers access to unbundled network elements in a manner that allows requesting carriers to combine such elements in order to

provide telecommunications service, as required by the 1996 Act. Similarly, in a few significant areas, such as geographic deaveraging and collocation pricing, BellSouth has again failed to demonstrate that its prices permit entry and effective competition by efficient competitors.

Despite a number of encouraging improvements since its earlier applications in South Carolina and Louisiana, BellSouth has not yet demonstrated that it has developed and deployed wholesale support processes that are adequate to ensure an open market. BellSouth's evidence based on actual commercial usage is unconvincing because of the relatively small volume of transactions processed by those systems, the absence of data measuring some important dimensions of performance, and indications of inadequate performance in some of BellSouth's performance data. Likewise, BellSouth's testing evidence does not overcome these problems because in critical respects it either fails to address certain key issues or does so only in a conclusory fashion. Even if BellSouth could overcome these problems, the lack of performance commitments or enforceable benchmarks suggests that the current limited development of local competition in Louisiana has not yet been shown to be irreversible.

Finally, in light of our determination that BellSouth's local markets have not been fully and irreversibly opened to competition, we conclude once again that the potential for competitive benefits in markets for interLATA services does not justify approving this application. BellSouth's estimates of the magnitude of those benefits rest on unconvincing analytical and empirical assumptions, but more importantly, its analysis fails to give adequate consideration to the more substantial benefits from increased competition in local markets that will be gained by requiring that local markets be opened before allowing interLATA entry.

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Second Application by BellSouth Corporation,)	
BellSouth Telecommunications, Inc., and)	
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Provision of In-Region, InterLATA)	
Services in Louisiana)	
)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction

The United States Department of Justice ("the Department"), pursuant to section 271(d)(2)(A) of the Telecommunications Act of 1996 ("1996 Act" or "Telecommunications Act"),¹ submits this evaluation of the application filed by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively "BellSouth") on July 9, 1998, to provide in-region, interLATA telecommunications services in the state of Louisiana.

As the Department has previously explained, in-region interLATA entry by a Bell Operating Company ("BOC") should be permitted only when the local markets in a state have been fully and irreversibly opened to competition.² This standard seeks to measure whether

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in various sections of 47 U.S.C.).

² This open market standard is explained more fully in the Affidavit and Supplemental Affidavit of Marius Schwartz and in our evaluation of SBC's section 271 application in Oklahoma. See Affidavit of Dr. Marius Schwartz ¶¶ 149-192 ("Schwartz Aff."), attached to this

barriers to competition that Congress sought to eliminate in the 1996 Act have in fact been fully eliminated and whether there are objective criteria to ensure that competing carriers will continue to have nondiscriminatory access to the facilities and services that they will need from the BOC.

In applying this standard, the Department will consider whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving construction of new networks, the use of unbundled elements of the BOC's network, and resale of the BOC's services -- are fully and irreversibly open to competitive entry to serve both business and residential consumers. To do so, the Department will look first to the extent of actual local competition as the best evidence that local markets are open.

The degree to which such existing entry is broad-based will determine the weight the Department places on it as evidence. If broad-based commercial entry involving all three entry paths has not occurred, the Department will examine competitive conditions to see whether significant barriers continue to impede the growth of competition and whether benchmarks to prevent backsliding have been established. Wherever practical, this examination will focus on the history of actual commercial entry. The experience of competitors seeking to enter a market can provide highly probative evidence concerning barriers to entry, or the absence thereof. However, we do not regard competitors' small market shares, or even the absence of entry, standing alone, as conclusive evidence that a market remains closed to competition, or as a basis

Evaluation as Ex. 1; Supplemental Affidavit of Dr. Marius Schwartz ¶¶ 26-60 ("Schwartz Supp. Aff."), attached to this evaluation as Ex. 2; DOJ Oklahoma Evaluation at vi-vii, 36-51. For complete citations to current and prior section 271 applications and filings, FCC and state commission orders, and third-party comments, see the citation index at iii.

for denying an application under section 271.³ For a variety of reasons, potential competitors may not immediately seek to use all entry paths in all states, even if the barriers to doing so have been removed, and a BOC's entry into interLATA services should not be delayed because of the independent business strategies of its competitors.

At the time of BellSouth's first section 271 application in Louisiana, the Department found that BellSouth faced no significant competition in Louisiana and that there were several critical barriers that impeded the growth of competition.⁴ In the nine months since the first Louisiana application was filed, BellSouth has taken significant steps to improve its wholesale support systems and there have been encouraging developments in competition by facilities-based entrants and resellers, though the market penetration of those competitors is still quite modest.⁵ Most significantly, however, there is still virtually no competition in Louisiana through the use of unbundled network elements ("UNEs"), and every reason to believe that there would

³ Contrary to the assertions of the Louisiana PSC, the Department has never adopted a "market share approach to determine whether a local market is open to competition." LPSC Comments at 7.

⁴ DOJ Louisiana I Evaluation at iii-iv, 4, 10-32, attached to this Evaluation as Ex. 3.

⁵ Because we believe the competitive concerns associated with entrants attempting to use unbundled network elements are the most prominent and troublesome, we have focused this evaluation on BellSouth's failure fully and irreversibly to open the Louisiana market to competitors using UNEs. However, as we discussed in our previous Louisiana evaluation, and as many of the third-party commenters attest, significant problems affecting competition by resellers and facilities-based competitor entrants remain. The primary remaining problem facing these two groups of entrants remains obtaining nondiscriminatory access to BellSouth's wholesale support processes (discussed in connection with wholesale support and OSS issues, *supra* Section IV). Facilities-based entrants also appear to face obstacles in the BellSouth region relating to interconnection trunking. See, e.g., Florida PSC Final 271 Order at 59 (discussing CLEC interconnection trunking problems in Florida).

be such competition if most of the impediments to UNE competition that the Department identified in its earlier evaluation were not still in place. In particular:

- BellSouth has maintained policies of physically separating critical pre-existing combinations of UNEs, as well as policies which impose unnecessary costs and technical obstacles on competitors that seek to combine UNEs. Collectively, these policies seriously impair competition by firms that seek to offer services using combinations of unbundled network elements.
- Although the Louisiana PSC has generally adopted a pricing methodology that may permit competition, BellSouth's prices do not consistently reflect the essential principles of that methodology, resulting in some prices for unbundled network elements that could prevent efficient competitors from entering the market and competing effectively.
- Despite a number of improvements, BellSouth has failed to demonstrate that it has adequate, nondiscriminatory wholesale support processes, including access to operations support systems ("OSS"), that would be critical to competitors' ability to obtain and use unbundled elements.

Therefore, taking BellSouth's current application as a whole, we find that there are still significant barriers to competitive entry in Louisiana, and we cannot yet conclude that local markets in Louisiana are fully and irreversibly open to competition. We discuss each of the particular deficiencies below, after briefly reviewing the state of competition in Louisiana.

I. The State of Competition in Louisiana

Louisiana is the nation's twenty-second most populous state and the fifth most populous state in the BellSouth region. Seventy-five percent of its population resides in the metropolitan areas of New Orleans, Baton Rouge, Shreveport, and Lafayette, and BellSouth is the incumbent local telephone exchange carrier ("LEC") for the vast majority of the state's population.⁶ As of

⁶ For census citations and a detailed discussion of competition in Louisiana markets, see Louisiana Overview and Description of Local Competitors, attached to this Evaluation as App. A.

1997, BellSouth served approximately 2.2 million of the 2.36 million switched access lines in Louisiana, approximately 72% of which were residential.⁷ The vast majority of the remaining lines in Louisiana were served by independent incumbent LECs, and not by BellSouth competitors.

In contrast, as of June 1998, there were six operational wireline facilities-based competitive local exchange carriers ("CLECs") in Louisiana, providing in the aggregate only 4,282 lines -- exclusively for business customers -- over their own separate facilities.⁸ There were also about thirty resellers operating in Louisiana (including the facilities-based wireline CLECs also providing resale service) providing service to approximately 44,000 lines, about 65% of which were residential. Wright Aff. ¶¶ 57, 60. Finally, as of June, two wireline CLECs in Louisiana had collectively placed in service about 100 unbundled loops. *Id.* ¶ 41. We briefly discuss each of the modes of entry below.⁹

⁷ FCC ARMIS Annual Summary Report 43-01, BellSouth Telecommunications Louisiana, 1997, at Table II, Rows 2150, 2090-2120 ("FCC ARMIS 43-01"); Federal Communications Commission, Preliminary Statistics of Communications Common Carriers, at Table 2.5, Table 2.3.

⁸ The six wireline carriers with operational facilities of their own are: e.spire (previously ACSI), American MetroComm (AMC), KMC Telecom Inc., Hyperion Telecommunications, Shell Offshore Services Company, and AT&T. Affidavit of Gary M. Wright ¶ 32 ("Wright Aff."), attached to BellSouth Brief as App. A, Vol. 7, Tab 28; BellSouth Brief at 4-7. See also Affidavit of Wendell Register ¶¶ 3-4 ("Register Aff."), attached to KMC Comments as Ex. 1 (clarifying that KMC provides facilities-based service only to business customers).

⁹ In addition to wireline, there are five operational wireless PCS providers serving approximately 35,000 business and residential customers. BellSouth argues, as it did in its earlier Louisiana application, that it meets the requirements of section 271(c)(1)(A), because PCS providers are "competing facilities-based" carriers that serve business and residential customers. In response to the FCC's holding in the earlier Louisiana application that PCS must be "an actual commercial alternative" to wireline services, BellSouth cites increased PCS subscribership, aggressive pricing plans, and market research to show that PCS is being used as a substitute for wireline in some cases. BellSouth Brief at 9-14.

Facilities-Based Entry: Facilities-based entry is beginning to emerge in Louisiana, although the amount and scope of this competition is still quite small and not enough to warrant a presumption of openness. Indeed, CLECs using their own facilities directly served only 0.7% of the over 617,000 business lines -- and *none* of the 1.58 million residential lines -- in BellSouth's Louisiana service area.¹⁰ Of the current six operational facilities-based wireline competitors targeting business customers in urban areas, three (e.spire, KMC Telecom Inc., and American MetroComm) started as competitive access providers and entered the local exchange market by reselling BellSouth's services.¹¹ They have only recently begun to provide service over their own facilities; the majority of their local exchange access lines are still served through resale. All three of these companies use their facilities in Louisiana to serve exclusively business

As stated in our earlier Louisiana evaluation, the Department will defer to the Commission's interpretation of its statute and to its factual findings on whether PCS providers satisfy the requirements of section 271(c)(1)(A). DOJ Louisiana I Evaluation at 4-9. Regardless of the Commission's resolution of that issue, it is clear even from BellSouth's submission that the vast majority of consumers do not consider PCS to be a close substitute for wireline local exchange service, and that PCS competition alone does not provide the full range of benefits we would expect from competitive local markets. See Declaration of Carl Shapiro and John Hayes at 9-13, attached to Sprint Comments as App. B; Sprint Comments at 21-25; Declaration of William C. Denk, M/A/R/C Louisiana PCS Study, attached to BellSouth Brief as App. A, Vol. 1, Tab 6.

¹⁰ See FCC ARMIS 43-01 at Table II, Rows 2090-2120; Wright Aff. ¶ 32.

¹¹ See Wright Aff. ¶¶ 28, 70, 86, 92-93. Two other carriers, Hyperion and Shell, have recently begun operations as facilities-based carriers, and neither currently serves any residential customers. Id. ¶¶ 104, 114. AT&T serves only a small number of local business customers over its own facilities. Affidavit of Michelle Augier ¶ 5 ("Augier Aff."), attached to AT&T Comments as App. Vol. I, Ex. A.

customers,¹² and at least one competitor with facilities operates in each of the three largest metropolitan areas of the state.

Reseller Entry: Whether measured by numbers of customers or access lines resold, most of the competition in Louisiana at present relies on the resale of BellSouth services. Of the roughly 44,000 lines to which Louisiana resellers currently provide service (Wright Aff. ¶¶ 57, 60), “pure” resellers (*i.e.*, resellers with no plans to construct new networks or facilities) account for the majority of the resale competition, providing service to 28,734 residential and 775 business lines. *Id.* ¶ 60. Wireline carriers with some operational facilities of their own, but which also resell service, collectively account for resale service to another 12,000 local lines, most of which are for business customers. *Id.* ¶ 57. Finally, resellers with plans to provide facilities-based service in the future currently provide service to the remaining 1,965 business and 375 residential CLEC lines. *Id.* It thus appears that while the “pure” resellers have primarily targeted residential customers, the carriers with some facilities of their own are primarily reselling business service.¹³

¹² Contrary to BellSouth’s claims, KMC apparently does not provide facilities-based service to *any* residential customers. KMC Comments at 3; Register Aff. ¶¶ 3-4.

¹³ Section 271 (c)(1)(A) requires BellSouth to have an approved binding agreement specifying the terms and conditions of interconnection and access to its network with one or more unaffiliated facilities-based providers of residential and business services. Such a facilities-based provider must be offering services either exclusively over its own facilities or predominantly over its own facilities in combination with resale of another carrier’s services. BellSouth, apparently relying on an Addendum filed to the DOJ’s Oklahoma Evaluation, argues that although the facilities-based carriers in Louisiana serve mainly business customers, its application meets the requirements of the above section because the facilities-based carriers and resellers *together* serve business and residential customers. *See* BellSouth Brief at 7-8.

BellSouth’s reliance on the Department’s Addendum is misplaced. The Department’s addendum stands only for the proposition that whether an individual provider is facilities-based

UNE Entry: Since April 1998, and indeed since BellSouth's last application, only two competitive carriers in Louisiana have used any unbundled loops in conjunction with other self-provided network facilities, and, collectively, these carriers have placed in service only about 100 unbundled loops.¹⁴ No CLECs are offering service exclusively using unbundled network elements, and there has been minimal use of unbundled switching or transport in Louisiana. BellSouth Brief at 44, 46. AT&T and MCI Metro, as well as e.spire -- which is not a major long distance carrier and has focused on local entry -- all have plans to enter local Louisiana markets through some use of unbundled network elements.

As the review above indicates, both facilities-based and resale competition have begun to develop in Louisiana, though both forms of competition are still quite limited. We are particularly concerned, however, that there is still virtually no competition in Louisiana using unbundled network elements, despite the fact that some CLECs perceive UNEs as an important way to enter the market and serve significant segments of customers.¹⁵ UNE competition may be particularly important to developing broad-based competition, and the absence of such competition using UNEs creates a presumption, but does not conclusively establish, that the

is to be determined based upon that provider's activities as a whole, and that a provider does not have to be both facilities-based for business customers and separately facilities-based for residential customers to satisfy Track A. It does not stand for the proposition that a facilities-based provider serving business customers and a *reseller* serving residential customers can be combined to meet the statutory requirements.

¹⁴ In contrast, during 1997 alone, BellSouth added 89,000 new access lines, an average of over 240 new lines per day. BellSouth, Notice of 1998 Annual Meeting Proxy Statement A-3 (Mar. 10, 1998) <<http://www.sec.gov/Archives/edgar/data/732713/0001047469-98-008732.txt>>.

¹⁵ See, e.g., Augier Aff. ¶ 15; MCI Comments at 13-14; Declaration of Marcel Henry ¶¶ 18-19 ("Henry Decl."), attached to MCI Comments as Ex. A; e.spire Comments at 1-2 (outlining e.spire entry plans for Louisiana).

market is not fully and irreversibly open to this form of entry. Our further analysis of competitive conditions in Louisiana, explained below, indicates that BellSouth cannot yet overcome this presumption. Indeed, a variety of barriers remain today that substantially impede competition using unbundled network elements.

II. BellSouth's Requirement That New Entrants May Combine UNEs Only Through Collocation Imposes Unnecessary Costs, Delay and Technical Obstacles

When analyzing whether the Louisiana markets have been fully and irreversibly opened to competition, the Department evaluates, among other things, the terms and conditions on which competitors will have access to unbundled network elements. The use of unbundled network elements was viewed by Congress as one of the principal options for competitors created by the 1996 Act, which imposes an obligation on BellSouth to provide "nondiscriminatory access to network elements on an unbundled basis . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory" and to provide such unbundled network elements "in a manner that allows requesting carriers to combine such elements in order to provide [any] telecommunications service." 47 U.S.C. § 251(c)(3). As the Department has previously stated, the availability of a means for efficiently combining UNEs is very important to the development of competition in all segments of the market. DOJ South Carolina Evaluation at 24.

The Department has concluded that local markets in Louisiana are not open to such competitive UNE entry. BellSouth's policy of requiring carriers that wish to combine network elements to collocate connecting equipment (such as a distribution frame) imposes unnecessary costs on competing carriers, impairs the ability of competing carriers to provide reliable service, and will substantially delay entry. These additional costs and delays put potential entrants at a

clear competitive disadvantage vis-à-vis BellSouth and are the most likely explanation for the virtual absence of such competition in Louisiana.¹⁶ These policies are not consistent with the open market standard used by the Department in evaluating applications under section 271.¹⁷ As explained below, entrants seeking to enter the market in a manner that requires them to combine UNEs encounter two types of difficulties. First, the only method of combining essential UNEs, such as loops and ports, offered by BellSouth, is by collocating connecting equipment within BellSouth central offices. This mode of combining UNEs inherently increases the cost and diminishes the quality of service the new entrant can provide compared to BellSouth. It should not be surprising that new entrants have not been eager to compete under circumstances where their cost structure will be burdened by requirements for additional equipment that are not borne by their principal competitor. Second, potential competitors have no assurance that BellSouth has the capability of provisioning the substantial volume of collocation arrangements and

¹⁶ See Henry Decl. ¶¶ 25-28.

¹⁷ The Commission's local competition rules required incumbent LECs to make available network elements sufficient for new entrants to provide telecommunications services using only unbundled elements obtained from an incumbent LEC. This aspect of the Commission's rules was upheld by the Eighth Circuit. Iowa Utilities Board v. FCC, 120 F.3d 753, 814 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (Jan. 26, 1998).

In order to prevent the incumbents from engaging in the anticompetitive and wasteful activity of separating network elements that were already combined, the Commission also prohibited the incumbents from separating such elements unless requested to do so. 47 C.F.R. § 51.315(b). This rule, however, was struck down by the Eighth Circuit, which interpreted section 251(c)(3) to mean that incumbent LECs could separate network elements and require requesting carriers to do the work of re-combining them. Iowa Utilities, 120 F. 3d at 813. (This ruling is currently being reviewed by the Supreme Court.) The Eighth Circuit's opinion, however, did not specifically address the meaning of the phrase in 251(c)(3) that UNEs be provided "in a manner" that will permit requesting carriers to combine them, *i.e.*, what mode of access to their network elements incumbents would be required to provide in order to permit competing carriers to combine those UNEs.

coordinated cut-overs that would be required for a broad-based or state-wide offering of services using UNE combinations.¹⁸

A. BellSouth's Policy of Requiring Collocation for Combining UNEs Inevitably Imposes Unnecessary Costs and Technical Obstacles on Competitors

BellSouth's approach to implementing section 251(c)(3) in light of the Iowa Utilities decision, as set forth in its SGAT and supporting affidavits,¹⁹ is to require requesting carriers to collocate connecting facilities in order to combine any network elements that BellSouth maintains may be separated.²⁰ BellSouth states that it will provide several specified combinations²¹ of UNEs for use by new entrants; certain combinations, however, such as the loop and port, loop and transport, and port and dedicated transport are not offered as

¹⁸ See Henry Decl. ¶¶ 21-24; Affidavit of Robert V. Falcone ¶ 82 ("Falcone Aff."), attached to AT&T Comments as App. Vol. IV, Ex. E.

¹⁹ BellSouth's interconnection contracts have not been amended to provide for cost-based pricing of UNEs to be used in combinations. The fact that competitors may only obtain cost-based UNEs through the SGAT, if they are to be used in combinations, may discourage such entry, because, in considering a business plan for competitive entry, the advantages of an interconnection agreement with definite terms and enforcement provisions could be a critical factor. Such concerns are magnified where, as in the case of BellSouth, important policies and practices are not even incorporated into the SGAT but are contained in documents such as its Collocation Handbook wherein it reserves the right to make unilateral changes. BellSouth Collocation Handbook at 4, attached to BellSouth Brief as App. A, Vol. 6, Tab 24, PAT-Ex. 2.

²⁰ "If a UNE can be physically separated, BellSouth will deliver it on a separated basis." Affidavit of Alphonso J. Varner ¶ 75 ("Varner Aff."), attached to BellSouth Brief as App. A, Vol. 6, Tab 25.

²¹ Varner states that BellSouth will provide a combination of a port, a cross connect, and common transport because "[t]he only technically feasible method to offer common transport is to combine it with the switch port and a cross connect." *Id.* ¶ 68. BellSouth does not state whether there are any other combinations of UNEs that it would provide if that were the only technically feasible method by which to offer them.

combinations. To obtain these critical combinations, a requesting carrier must separately order each element combined with a cross connect "tail."²²

BellSouth's policies will inevitably slow the process of competitive entry, raise the cost of entry, and impair the quality of services by carriers seeking to combine UNEs. In order to enter the market in this manner, competitors would first need to negotiate and deploy collocations. This would be a time-consuming process for any competitor contemplating mass-market entry -- which would require collocation in a large number of BellSouth offices -- even assuming that BellSouth could meet its stated intervals in the face of a substantial increase in the volume of collocations ordered. Indeed, BellSouth's commitment to provide an initial response to collocation requests within 20 business days (for virtual collocation) or 30 business days (for physical collocation) applies only when orders for collocation arrangements are limited to three central offices within a 15-business-day period. If CLEC orders exceed this volume, it is not clear what intervals BellSouth would observe. Thus, a new entrant contemplating a statewide (or near statewide) service offering might expect its roll-out to take up to four years.²³ This process could also be delayed by prolonged negotiation or arbitration over the terms of collocation. Moreover, after a CLEC obtained and prepared collocation space, it would require additional

²² BellSouth states that it will provide the following individual UNEs "combined" with cross connect tails: Loop, port, and loops with loop concentration. *Id.* Thus, instead of providing the combination of a loop and port connected at its MDF, BellSouth offers "combinations" of loops with cross connects and ports with cross connects so they may be connected in a collocation arrangement.

²³ Affidavit of Pamela A. Tipton ¶¶ 21-24 ("Tipton Aff."), attached to BellSouth Brief as App. A, Vol. 6, Tab 24; BellSouth Physical Collocation Master Agreement § 4.1.1, attached to Tipton Aff. as PAT-Ex. 1; Falcone Aff. ¶¶ 76-77. BellSouth's commitments for the actual provisioning of collocations are also subject to significant qualifications. *See* Falcone Aff. ¶ 79.

lead time to pre-wire all of the central offices needed for a mass-market launch. Falcone Aff.

¶ 78.

In addition to delaying or "gating" competitive entry, using collocation to combine BellSouth UNEs substantially raises the cost of entry above BellSouth's costs for the same network elements. CLECs intending to combine BellSouth UNEs would face:

- the costs for construction of the collocation space (for physical collocation)
- recurring charges for the ongoing use of the collocation space
- non-recurring charges for the work undertaken by BellSouth to connect the UNEs to the CLEC's collocation space which are reflected in the charges for the UNEs and the cross connects
- recurring charges for the additional cross connects between the loop and collocation; the line port and collocation; and, for dedicated transport, the trunk port and collocation and the inter-office trunks and collocation²⁴
- the costs for the equipment BellSouth required to be collocated to effect the combination of elements.

All of these costs are unnecessary in the case of BellSouth customers migrating to a CLEC, and could be avoided, but for BellSouth's policy of requiring collocation by CLECs to recombine elements that have been needlessly separated. Moreover, scarce collocation space for combining BellSouth UNEs will inevitably restrict use by other competitors needing such space to interconnect their network facilities.

²⁴ See Varner Aff. ¶¶ 70, 75. These charges for multiple sets of cross connects would seem to be required for any network elements that a new entrant may request from BellSouth. For example, if access to a BellSouth channel bank was required to extend a loop to a different central office, instead of simply connecting it into the circuit at BellSouth's distribution frames, it could be necessary to run cross connects to CLEC frames (analog and digital) on both sides of this element. Falcone Aff. ¶¶ 132-36. See also Henry Decl. ¶¶ 25-29.